

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:03CR562
)	
v.)	
)	
KEVIN LUCAS,)	ORDER NUNC PRO TUNC
)	
Defendant.)	
_____)	

This matter is before the Court on the motions of defendant Kevin Lucas ("Lucas") for a reduction in sentence pursuant to a change in the Sentencing Guidelines (Filing Nos. [47](#) and [49](#)). The Court finds the motions should be denied.

On August 3, 2010, the Fair Sentencing Act of 2010 (the "FSA") reduced the qualifying amount of cocaine base associated with mandatory minimum sentences. Fair Sentencing Act of 2010, Pub. L. 111-220, 124 Stat. 2372 (2010). Section 2D1.1 of the Guidelines incorporated the new statutory minimums by lowering the threshold amounts of cocaine base for most base offense levels. Lucas was originally assigned a base offense level of 36 which, in 2004, encompassed quantities of cocaine base between 500 grams and 1.5 kilograms. A previous request for a reduction in sentence pursuant to the new Guidelines (Filing No. [41](#)) was granted (Filing No. [45](#)), lowering Lucas's base offense level to 34, which encompasses quantities of cocaine base between 840 grams and 2.8 kilograms. Lucas now argues that his base offense level should be reduced to 32 (encompassing quantities between

280 and 840 grams) because he was sentenced based on responsibility for an amount *between* 500 grams and 1.5 kilograms.

The Guidelines direct the Court to "determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant was sentenced [and] leave all other guideline application decisions unaffected." U.S.S.G. § 1B1.10(b)(1). Since the Guidelines at the time included a range of 500 grams to 1.5 kilograms, the presentence report is ambiguous as to the exact amount of crack cocaine but after a review of that report, the Court finds that the defendant should be held responsible for at least 1.25 but less than 1.5 kilograms of cocaine base, and that his base offense level therefore is 34. After a three level decrease for acceptance of responsibility, Lucas's total offense level is 31. Defendant's Criminal History Category remains a VI. The resulting Guideline range is 188 to 235 months. Accordingly,

IT IS ORDERED that defendant's motions for a reduction in sentence are denied.

DATED this 17th day of August, 2012.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court